

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Frank Oden vs.  
Bill Keen Trucking

Order

On Tuesday, December 6, 2005, an administrative hearing was held in the offices of the Arkansas Department of Labor. The purpose of the hearing was to consider the appeal filed by Bill Keen Trucking from a Preliminary Wage Determination Order finding that Bill Keen Trucking was indebted to Frank Oden in the amount of \$604 in back wages. Present at the hearing were the claimant, Frank Oden, and Lisa Keen and Elaine Keen, who appeared on behalf of Bill Keen Trucking. From the testimony, documents and other evidence before the Hearing Officer, the following Order is entered.

Frank Oden was employed by Bill Keen Trucking ("Keen Trucking") as a truck driver. He worked for Keen Trucking from April, 2005 through August 5, 2005. His rate of pay was 26% of the loads he delivered. During the period in question, he delivered loads with invoices totaling \$3535.00. His payment due, \$3535 times .26 equaled \$919.10. Of that amount, he received \$332.58, leaving a balance of \$586.52.

Keen Trucking claims that the balance due to Mr. Oden is offset by the amounts that they charged to him for damage to some loads he delivered. Mr. Oden admitted the damages, with the exception of the final damage charge that Keen Trucking claimed in October of 2005, after Mr. Oden had filed a wage claim with the Arkansas Department of Labor. A review of facts shows that Keen Trucking attempted to charge off 100% of the amount of damages, except the final damage charge, from Mr. Oden's final paycheck dated August 12, 2005. Mr. Oden claimed the agreement in place when he began working for Keen Trucking specified that he would only be charged 26% of any load damage. Keen Trucking argued during the

investigation that the policy had changed and that the drivers were now responsible for 100% of the damages to any load. However, Keen Trucking was unable to offer evidence that Mr. Oden was aware of the change or had been notified of the change, and therefore, deductions for damages should have been limited to 26%.

Mr. Oden admitted to responsibility for the damages charged against his final paycheck, however, he adamantly denies responsibility for the final amount of damages that Keen Trucking is attempting to claim as a set off. That claim for set off was made by letter, dated October 20, 2005, addressed to the Arkansas Department of Labor from Lisa Keen. The damage in question was to the underside of a car delivered to JMN Transportation. Mr. Oden denied being responsible for this damage and Ms. Keen testified that Keen Trucking never contests damage claims, but usually accepts whatever deductions the customer has made for damages. Although Elaine Keen testified that the damage was from an improper tie down, Mr. Oden disputed that he improperly tied down the vehicle or caused the damage. In set-off claims, the employer bears the burden of proof. Unsupported opinion testimony is not sufficient to meet this burden of proof. Mr. Oden has been forthcoming about his admissions of responsibility for the other damages. Therefore, the claim for a damage set off from the delivery to JMN Transportation is disallowed.

THEREFORE, it is hereby ORDERED that Bill Keen Trucking is indebted to Frank Oden in the amount of \$481.46. This amount represents the total amount of invoices, the amounts of which were verified by testimony and correspondence from Bill Keen Trucking and are found to be \$2885 and \$250 admitted by letter dated September 1, 2005, and \$400 admitted by letter dated September 8, 2005, for a total of \$3535. Mr. Oden's gross reimbursement, \$3535 times 26%, equals \$919.10. Mr. Oden admits he received a check for \$332.58, leaving an amount due of \$586.52. Mr. Oden admits to damages in the total amount of \$392.55 and is liable for

26% of that amount, \$102.06, and for a \$3.00 cell phone bill, for a further reduction to \$481.46.

Bill Keen Trucking has tendered checks to the Arkansas Department of Labor in the gross amount of \$169.00. These checks will be returned to Bill Keen Trucking and Bill Keen Trucking is hereby ORDERED to remit the amount due, \$481.46 to the Arkansas Department of Labor.

Amy Whynseerz  
HEARING OFFICER  
1/13/06  
DATE

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

**In the Matter of  
Matthew Wall vs. DeCarlo's  
Italian Pizzeria**

**ORDER**

On Tuesday, October 4, 2005, at 10:00 a.m., a hearing was held in the offices of the Arkansas Department of Labor. The purpose of this hearing was to consider the appeal filed by the owners of DeCarlo's Italian Pizzeria ("DeCarlo's"), Alan Carlo and David McKinney, from a Preliminary Wage Determination Order finding that DeCarlo's was indebted to Matthew Walls for unpaid wages in the amount of \$377.00. Present was David McKinney, partner, appearing for DeCarlo's Italian Pizzeria, and Matthew Wall, claimant.

Matthew Wall worked for DeCarlo's as a cook from approximately May 6, 2005, until June 9th, 2005. He was making \$8.00 per hour when he left. Mr. Wall claims that he is owed for 51 hours of work. He claims he was paid \$74.47 for that work, leaving an amount due of \$377.00. His former employer claims entitlement to setoffs for t-shirts, mishandled food, over consumption of Mountain Dew and lost equipment. In addition, DeCarlo's deducted one hour from Mr. Wall's last paycheck for sitting with his mother while she ate in the restaurant, an incident which occurred during Mr. Wall's last week of work.

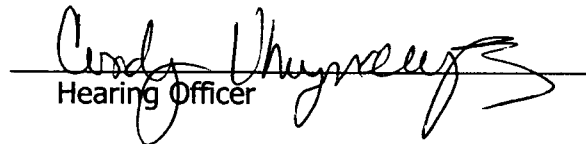
According to records submitted by DeCarlo's, Mr. Walls worked a total of 43.75 hours during his last week of work. He was paid at a rate of \$7.00 per hour; however, he should have been paid \$8.00 per hour. In wage cases, the employer has the burden to prove

entitlement to a set-off against wages. In this case DeCarlo's has the burden of proving by a preponderance of the evidence that the amounts claimed as a set-off are valid.

In an attempt to sustain the burden of proof, DeCarlo's submitted a summary of the "charges" to Mr. Wall. According to Mr. McKinney's testimony, this summary was prepared after Mr. Walls left employment and was based on "memory". No contemporaneous records of burned food, missing equipment or employee consumption of food and beverages was kept. Additionally, the majority of the items appear to be those items that cannot be specifically attributable to one employee, as other employees worked at the same time Mr. Wall worked, or are of such nature as to be properly considered an ordinary cost of doing business. No evidence was presented that attributed any of the burnt food to knowing and willful conduct on the part of Mr. Walls.

The last item claimed as a set off is the costs of t-shirts provided to Mr. Walls. On this issue there are conflicting statements by the employer in the record. The t-shirts were provided by the employer. The employer states in his response to the wage claim that the shirts cost \$12.00 each and Mr. Wall had five. Next, the employer submitted an invoice for 5 t-shirts at a cost of \$24.00 each. The employer's testimony on this point was not credible. Mr. Wall testified he turned in the shirts and that he only had two. The shirts were provided as a benefit to the employer and therefore, the cost of replacing stained, worn out or damaged shirts should not be deducted from an employee's paycheck. Furthermore, it should be expected that uniforms used to work in will look like they have been worn to work and the employer must bear the cost of wear and tear.

THEREFORE, it is hereby Ordered that Alan Carlo and David McKinney d/b/a DeCarlo's Italian Pizzeria is indebted to Matthew Wall in the amount of **\$290.53**. This amount represents 40 hours at \$8.00 per hour plus 3.75 hours at \$12.00 per hour. The amount received by Mr. Wall of \$74.47 has been deducted.

  
Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

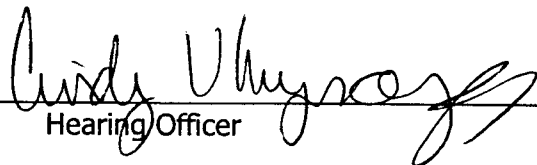
In The Matter of  
William Coston vs. American Design  
And Fabrication

ORDER

On Tuesday, September 6, 2005, a hearing was held in the offices of the Arkansas Department of Labor. The purpose of the hearing was to take testimony and evidence concerning the appeal filed by William Coston from a Preliminary Wage Determination Order issued by the Arkansas Department of Labor finding that Mr. Coston was not owed money by his former employer.

The record reflects that both parties were sent notice of the hearing by certified mail and by regular mail. Richard Coston of American Design and Fabrication was present for the hearing, however, William Coston was not present.

THEREFORE, it is hereby ORDERED that the appeal filed by William Coston be dismissed.

  
Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Jerry Eslick vs.  
Jerry McMaran

Order

On Tuesday, September 6, 2005, at 2:00 p.m. a hearing was held in the offices of the Arkansas Department of Labor. The purpose of this hearing was to consider the appeal filed by Jerry Eslick from a Preliminary Wage Determination Order that found his former employer, Jerry McMaran, owed him \$290.00 in back wages. Both parties were present. From the testimony of parties and other matters the following order is entered.

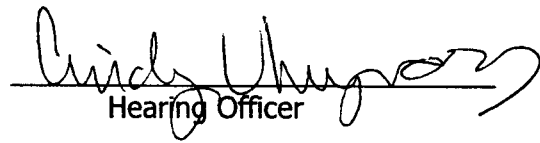
Mr. Eslick was employed by Mr. McMaran from approximately April 12, 2005, to somewhere around April 22, 2005. Neither party could be specific as to the dates that Mr. Eslick worked. They did agree that Mr. Eslick was to be paid \$10.00 per hour and that he is owed some money. They cannot agree on how much work Mr. Eslick did or how much he is owed. Mr. Eslick did not present any supporting evidence or witness testimony to substantiate his claim of \$505. In fact, Mr. Eslick's own testimony was rambling and incomplete. The claimant must present a preponderance of evidence to prove their entitlement to wages. In this case, Mr. Eslick's testimony by itself is totally insufficient to meet his burden of proof.

However, Mr. McMaran admitted both in writing and at the hearing that he owed Mr. Eslick for 36 hours of work. As Mr. McMaran's statements are against his interest, they are probative of at least part of Mr. Eslick's claim. Mr. McMaran testified that he felt he was entitled to a set off of \$110. He claims that amount represents the cost of repairing a pressure washer and a payment of \$40 toward the 36 hours owed. Mr. McMaran testified that Mr. Eslick broke the part on the pressure washer about a year before he came to work for him. Mr. McMaran cannot claim a set off from wages for something that happened before an employment relation-



ship began. Therefore the set off for the pressure washer is disallowed. Mr. Eslick denied that Mr. McMaran paid him the \$40.00, however, Mr. McMaran's testimony is more credible than Mr. Eslick's and Mr. McMaran has been honest about owing Mr. Eslick money. Therefore, that set off will be allowed.

THEREFORE it is hereby ORDERED that Jerry McMaran is indebted to Jerry Eslick in the amount of Three Hundred Twenty Dollars and no cents (\$320).

  
Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Don Angelo Bailey vs.  
Bourbon Boys' Bar & Grill

Order

On Tuesday, August 30, 2005, a hearing was held before the Arkansas Department of Labor in the matter of the wage claim filed by Don Angelo Bailey against Bourbon Boy's Bar & Grill. The wage claimant, Don Angelo Bailey was present. The employer, Bourbon Boy's Bar & Grill was represented by Steven Todd Wilkinson. Don Cash was the hearing officer on behalf of the Arkansas Department of Labor.

Facts

Mr. Bailey filed a wage claim against Bourbon Boy's Bar & Grill claiming unpaid wages of \$1,000.00. The employer denied the wages claimed and contended that no monies were owed because Mr. Bailey was exempt under the Minimum Wage Act of the State of Arkansas. The employer requested an administrative hearing on the matter. A certified letter informing both parties of the hearing date was sent by certified mail on July 27, 2005.

The hearing began at 2:10 p.m. The claimant testified that he had not been paid his salary of \$1,000.00 for work performed as the Front-of-House Manager for Bourbon Boy's Bar & Grill during the pay period of April 9<sup>th</sup>, 2005 through April 23<sup>rd</sup>, 2005. The employer testified that the claimant was exempt under the Minimum Wage Act and therefore felt no wages were due for the time period worked. Both parties agreed that the claimant missed three days of work during the fourteen day pay period. With the business closed on Sundays, the claimant had nine actual working days during the pay period in question.

## Findings

In wage claim matters, the claimant has the burden of proof. That burden may not be met by the claimant's testimony alone, unless such testimony was uncontroverted. In this case, the employer, who denied the claim and requested the hearing, wrongly argued that the wages were not due because the claimant was exempt under the Minimum Wage Act. The hearing officer explained that Ark. Code Ann. §§ 11-4-301 and 303 gave the Department of Labor clear jurisdiction in this matter. This is not a Minimum Wage claim and does not fall under the Minimum Wage Act. The claimant filed a wage claim, which falls under Ark. Code Ann. §§ 11-4-301 and 303 and allows the Department of Labor to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. The employer then claimed a set-off of wages for vacation days that had been previously approved and paid but that had not been accrued. The employer has the burden of proof to provide evidence of an agreement to the set-off. There was no evidence in this case of an agreement between the claimant and the employer regarding a repayment of vacation days that had been previously paid even though they had not been accrued. The employer then claimed a set-off of wages for an unpaid bar/food bill that had not been paid by the claimant. The employer did not have a copy of the bar/food tab and was advised by the hearing officer to submit the bill to the Department of Labor. The record was kept open in order to allow the employer to submit the bill. The employer did not submit the bill and the set-off is denied. Since the business is closed each Sunday, there are twelve working days for the pay period. The claimant's \$1,000.00 salary divided by twelve days equals \$83.33 a day in salary. The claimant worked nine days during the pay period.

THEREFORE, the employer is ordered to pay the wage claimant a total of \$750.00.

*Don Cash*

Don Cash, Hearing Officer

*9-27-05*

Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Jerry Carter vs. Don Ozment

Order

On Tuesday, August 2, 2005, a hearing was held in the offices of the Arkansas Department of Labor. The purpose of the hearing was to take testimony and receive evidence pursuant to the appeal filed by Jerry Carter from a Preliminary Wage Determination Order issued by the Arkansas Department of Labor, finding that his former employer, Don Ozment, was not indebted to him for back wages. Present was Jerry Carter and Jeanne Ozment. From the evidence received in the record, testimony of parties and other matters before the hearing officer, the following order is made.

Jerry Carter was employed as a truck driver with Don Ozment from February, 2005, until April 2005. The normal course of business was for Mr. Carter to receive cash advances for expenses and either receive reimbursement on the paycheck for expenses exceeding the advances or have a deduction made from the paycheck when the cash advances exceeded the actual expenses. Mr. Carter's rate of reimbursement was .28 per mile.

A review of the information in the record indicates that during his employment, Mr. Carter drove a total of 11,020 miles. The 11,020 miles times .28 per mile equals \$3085.60. The records on expenses and advances differ between the payroll summary submitted by the employer and the actual trip packets submitted in the record. Therefore the hearing officer has opted to use the actual trip packets as the expenses documented on the packets exceed those listed in the payroll summary and are more favorable to the claimant. The trip packets contain the fuel expense that Mr. Carter alleges was not reimbursed. Including the fuel expense in

question, Mr. Carter incurred expenses of \$6143.47 during his employment. He received cash advances totaling \$7650. Subtracting the expenses, including the fuel expense of \$424.99, from the cash advances leaves an overdraw of cash by Mr. Carter in the amount of \$1506.53. Subtracting the overdraw from the mileage reimbursement leaves an amount owed of \$1579.07.

Mr. Carter received a final check from Dan Ozment in the amount of \$1585.58, which he cashed. Mr. Carter feels that a fuel expense of approximately \$424.99 during a trip to McAllen, Texas was not accounted for by Mr. Ozment. A review of the packet for that trip, the payroll summary and a comparison of the expense amounts allowed, shows that the fuel charge was included in the expenses and Mr. Carter has been reimbursed fully for his wages.

THEREFORE, it is hereby Ordered that the Preliminary Wage Determination Order in this case be affirmed.

  
Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Tammie Weatherley vs.  
First Class Cuts

ORDER

On May 24, 2005, a hearing was held in the offices of the Arkansas Department of Labor to consider the appeal filed by Dan McAdams acting on behalf of First Class Cuts from a preliminary wage determination Order finding that First Class Cuts was indebted to Tammie Weatherley in the amount of \$683.96.

Tammie Weatherley was employed by First Class Cuts in its Searcy, Arkansas location. She was employed as the salon manager and was paid at a rate of \$9.00 per hour. She was employed from May of 2004, until December 27, 2004. At dispute is the amount of wages owed for the last pay period she worked, from December 13, 2004, until December 23, 2004. Although, from the evidence submitted from First Class Cuts, Ms. Weatherley earned gross wages in the amount of \$634.50, First Class Cuts claims set offs for money taken from the register on Ms. Weatherley's last day, the cost of movie advertising for the salon, and for missing Managers' Daily Reports.

Mr. McAdams, on behalf of First Class Cuts, alleges that Ms. Weatherley took \$140 from the store cash register the day she left employment. Ms. Weatherley admits she took the \$140 from the cash register; however she has submitted receipts for store expenses that she said she paid for out of her own pocket. Mr. McAdams never disputed that the receipts were for business expenses. The receipts total \$170.00. A statement gathered by the investigator for the Arkansas Department of Labor and included in the file, indicates that it was common practice for Ms. Weatherley to pay for some store expenses out of her own pocket and be paid back for them. Therefore, there is not sufficient evidence to support First Class Cuts contention

that it is entitled to a set off against wages for the \$140.00 which Ms. Weatherley took from the cash register.

Mr. McAdams, alleges on behalf of First Class Cuts that a set off is due from wages for Managers' Daily Report Sheets that were not turned in when Ms. Weatherley left. Ms. Weatherley has submitted two reports that she testified were in her possession and these will be forwarded to Mr. McAdams. Therefore, there is not sufficient evidence to support First Class Cuts contention that it is entitled to a set off against wages for the Managers' Daily Report Sheets. There is insufficient evidence of any other missing documents to support any set off against wages. There also was no testimony from First Class Cuts regarding the value of any missing documents. A set off from wages cannot be supported without a showing of the specific amount of damages. Speculative or subjective values are not sufficient to show specific damages.

Lastly, First Class Cuts contends that movie advertising purchased by Ms. Weatherley on its behalf was an unauthorized expense and should be allowed as a set off against wages. Ms. Weatherley was employed as the salon manager and had authority to make purchases on behalf of the salon. She testified she believed she had the authority to make the contract for advertising and the evidence is clear she had apparent authority. It is undisputed that the advertising was for the benefit of the salon and not for Ms. Weatherley's personal benefit. If the quality or quantity of the advertising was not up to Mr. McAdams' or First Class Cuts, expectations, that is a matter between the advertising company and First Class Cuts, not Ms. Weatherley. There was absolutely no evidence presented that Ms. Weatherley was personally enriched or personally benefited in any way from the advertising. Therefore, there is not



sufficient evidence to support First Class Cuts contention that it is entitled to a set off against wages for the cost of the advertising.

It is hereby ORDERED that First Class Cuts is indebted to Tammie Weatherley in the gross amount of \$634.50 in back wages due, plus \$39.46 in uncollected expenses, for a total of \$673.96.

Cynthia J. O'Hanrahan  
Hearing Officer

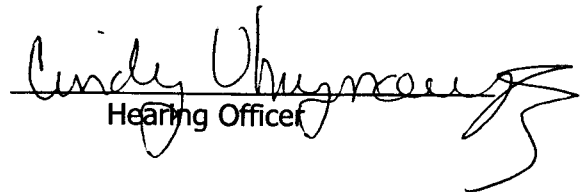
BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Stephen Lawrence vs.  
Industrial Automation Services

Order

On Tuesday, May 10, 2005, a hearing was held at 10:00 a.m. in the offices of the Arkansas Department of Labor to consider the appeal filed by Stephen Lawrence from a Preliminary Wage Determination Order entered finding that Industrial Automation Services was not indebted to him for back wages. Mr. Lawrence was present, however, no representative of Industrial Automation Services was present. Notice was sent by certified mail and by regular mail to the addresses provided by the parties. No communication was received from Mr. Jones regarding his inability to be present at the hearing.

THEREFORE, it is HEREBY ORDERED by default, that Anthony Jones d/b/a Industrial Automation Services is indebted to Stephen Lawrence in the amount of \$975.25. Entry of a default Order is made only on the basis of Mr. Jones' failure to appear and should not be construed as a finding that the Claimant has presented sufficient facts to satisfy his burden of proof in this case.

  
Hearing Officer

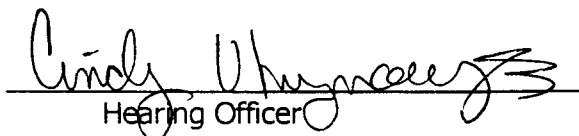
BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
James Rhoades vs.  
Hillcrest Plumbing

Order

On Wednesday, April 20, 2005, a hearing was held in the offices of the Arkansas Department of Labor at 10:00 a.m. The hearing was held pursuant to an appeal filed by James Rhoades from a Preliminary Wage Determination Order entered by the Arkansas Department of Labor finding that his previous employer, Hillcrest Plumbing, did not owe back wages to him. Notice of the hearing was sent to both parties by certified mail, return receipt requested and by regular mail. Both parties returned signed receipts. However, Mr. Rhoades failed to appear at the hearing or communicate a reason for his absence. A representative of Hillcrest Plumbing was present at the hearing.

THEREFORE the appeal filed by James Rhoades is dismissed.

  
Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Julie Cumberland vs. Westrock  
Animal Hospital

Order

On Tuesday, April 12, 2005, a hearing was held in the offices of the Arkansas Department of Labor. The hearing was held pursuant to an appeal filed by Julie Ann Cumberland from a Preliminary Wage Determination Order that found her former employer was not indebted to her for a deduction made from her final paycheck. Ms. Cumberland was present and represented herself. Representing Westrock Animal Hospital was Dr. Rene LaVergne, DVM.

The facts of the case are undisputed. Ms. Cumberland worked as a veterinary assistant for Westrock Animal Hospital from April 15, 2004 until January 31, 2005. Her rate of pay was \$8.75 per hour. Westrock Animal Hospital withheld the amount of \$120.29 from her last paycheck in repayment of health insurance premiums paid on her behalf for coverage that did not expire until March 1, 2005. The amount of the premium was \$120.29 per month. Ms. Cumberland was covered under the insurance from September of 2004 until March 1, 2005, one month after she left employment. The employer paid the premium in a lump sum for the period of September, 2004, until March 1, 2005. Ms. Cumberland testified she still had the insurance and had paid all premiums after March 1, 2005, herself.

Ms. Cumberland disputes the deduction for the insurance premium and maintains that the insurance was a benefit offered by the employer and she should not be charged the premium for the month after her last day of employment. However, Ms. Cumberland fails to understand that although her employer offered payment of insurance as a benefit during employment, he did not have the benefit of her services from February 1, 2005, until March 1, 2005. There is no evidence from the employee handbook submitted by Ms. Cumberland or

from her testimony that the employer bound himself to pay for insurance coverage for people who were no longer employed. Ms. Cumberland had the benefit of the insurance from February 1, 2005, until March 1, 2005. She presented no evidence that she requested that the coverage be cancelled effective February 1, 2005. To disallow the set off of the insurance premium would be to allow Ms. Cumberland to unjustly enrich herself at the expense of her employer.

THEREFORE, it is hereby Ordered the Preliminary Wage Determination Order be upheld.

Cindy Whymore

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Mary Frances Babbs vs.  
Will & Becca Wetzel

Order

On Tuesday, April 5, 2005, a hearing was held in the offices of the Arkansas Department of Labor. The hearing was held pursuant to an appeal by Will & Becca Wetzel from a Preliminary Wage Determination Order finding they were indebted to Mary Frances Babbs in the amount of \$99.19. Notice of the hearing was sent certified mail, with the return receipt received by the Department of Labor on March 15, 2005. Ms. Babbs was present for the hearing, however, the Wetzel's failed to appear.

THEREFORE, it is hereby Ordered that the Preliminary Wage Determination Order be upheld, and that Will and Becca Wetzel are indebted to Mary Frances Babbs in the amount of \$99.19.

  
\_\_\_\_\_  
Jackie Hughes  
Hearing Officer

FEES:  
Postage 0.37  
Certified Fee 2.30  
Return Receipt 1.75  
Restricted  
TOTAL \$ 4.42  
POSTMARK OR DATE

RECEIPT  
7180 9594 0130 5000 0433  
FROM:  
LABOR STANDARDS DIVISION  
RE:  
DP:  
PB:  
SEND TO:  
WILL & BECCA WETZEL  
TOBACCO TOWN STORES  
301 N COMMERCE  
RUSSELLVILLE AR 72801

FEES:  
Postage 0.37  
Certified Fee 2.30  
Return Receipt 1.75  
Restricted  
TOTAL \$ 4.42  
POSTMARK OR DATE

RECEIPT  
7180 9594 0130 5000 0426  
FROM:  
LABOR STANDARDS DIVISION  
RE:  
DP:  
PB:  
SEND TO:  
MARY FRANCES BABBS  
11200 OAKHILL RD  
LITTLE ROCK AR 72206


BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Mary Frances Babbs vs.  
Will & Becca Wetzel

Order

On Tuesday, April 5, 2005, a hearing was held in the offices of the Arkansas Department of Labor. The hearing was held pursuant to an appeal by Will & Becca Wetzel from a Preliminary Wage Determination Order finding they were indebted to Mary Frances Babbs in the amount of \$99.19. Notice of the hearing was sent certified mail, with the return receipt received by the Department of Labor on March 15, 2005. Ms. Babbs was present for the hearing, however, the Wetzel's failed to appear.

THEREFORE, it is hereby Ordered that the Preliminary Wage Determination Order be upheld, and that Will and Becca Wetzel are indebted to Mary Frances Babbs in the amount of \$99.19.

  
Hearing Officer

RECEIPT  
7180 9594 0130 5000 0433  
FROM: LABOR STANDARDS DIVISION  
RE: LABOR STANDARDS DIVISION  
DP:  
PB:  
SEND TO: WILL & BECCA WETZEL  
TOBACCO TOWN STORES  
301 N COMMERCE  
RUSSELLVILLE AR 72801  
FEES:  
Postage 0.37  
Certified Fee 2.30  
Return Receipt 1.75  
Restricted  
TOTAL \$ 4.42  
POSTMARK OR DATE

RECEIPT  
7180 9594 0130 5000 0426  
FROM: LABOR STANDARDS DIVISION  
RE: LABOR STANDARDS DIVISION  
DP:  
PB:  
SEND TO: MARY FRANCES BABBS  
11200 OAKHILL RD  
LITTLE ROCK AR 72206  
FEES:  
Postage 0.37  
Certified Fee 2.30  
Return Receipt 1.75  
Restricted  
TOTAL \$ 4.42  
POSTMARK OR DATE

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Donald Bykoff vs.  
Superior Chevrolet

Order

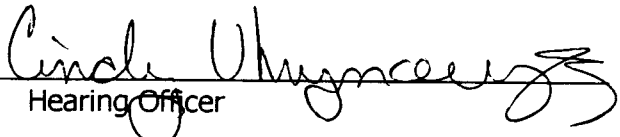
On Thursday, March 24, 2005, a hearing was held in the offices of the Arkansas Department of Labor pursuant to an appeal filed from a Preliminary Wage Determination Order entered finding that Superior Chevrolet was not indebted to Donald Bykoff for back wages. Appearing on behalf of the Superior Chevrolet was Stacy Cook. Appearing on his own behalf was Donald Bykoff. Pursuant to the testimony, evidence and other matters before the hearing officer, the following Order is made.

Donald Bykoff was employed by John Walters Chevrolet Inc. from August 21, 1996, until the sale of the business to Superior Chevrolet. At issue is nine and one half hours of work that Mr. Bykoff performed on December 1 and December 2, 2004. Neither the actual time worked nor Mr. Bykoff's rate of pay, \$6.50 per hour, are disputed; however, Superior Chevrolet claims that the sale from John Walters Chevrolet was not final until December 2, 2004, at which time Mr. Bykoff and others were let go by Superior Chevrolet.

Despite Superior Chevrolet's claims, it is clear from the sales agreement that the effective date of the sale was November 30, 2004. Both parties testified that on December 1st and 2nd, Superior Chevrolet was present at the business. Mr. Bykoff presented evidence that Superior Chevrolet had assumed liability for business expenses with invoice dates of December 1st. It is clear from the evidence that Superior Chevrolet had legal title and the right to control the business on December 1, 2004.



THEREFORE, it is hereby ORDERED that the Preliminary Wage Determination Order be dismissed, and it is also hereby ORDERED that Superior Chevrolet is indebted to Donald Bykoff in the amount of \$61.75 for unpaid wages earned December 1, 2004 and December 2, 2004.

  
Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Jason LeBlanc vs.  
Lumberland

Order

On Thursday, February 24, 2005, a telephone hearing was held in the offices of the Arkansas Department of Labor regarding the appeal filed by Lumberland Home Improvement from a Preliminary Wage Determination Order in favor of Jason LeBlanc. The Preliminary Wage Determination Order found that Lumberland Home Improvement was indebted to Jason LeBlanc in the amount of \$500 for unpaid wages.

Present by telephone were Jason LeBlanc and Maria Griffin of Lumberland Home Improvement. Both parties identified themselves and were sworn in. Mr. LeBlanc had claimed that he had not received his last paycheck and in addition had amount deducted from his pay for damaged pallets. Lumberland claimed that no deductions had been made and that Mr. LeBlanc had received paychecks for every week he worked for them. After receiving the Preliminary Wage Determination Order, Lumberland provided copies of all payroll checks cashed by Mr. LeBlanc.

Upon questioning, Mr. LeBlanc could not identify the specific week for which he was not paid. In fact, the documentary evidence submitted by Lumberland indicated that he received all pay checks for all time he worked. There were no weeks in which pay was not evidenced by a copy of a cancelled check. Mr. LeBlanc conceded he may have been mistaken.

THEREFORE, it is hereby ordered that the Preliminary Wage Determination Order in favor of Mr. LeBlanc be reversed, and Lumberland is cautioned to provide evidence in a timely manner to Arkansas Department of Labor investigators in any future matters.

*Cindy Whymore*  
Hearing Officer

**CERTIFIED MAIL**

RE:

7180 9594 0130 5000 0273

MARIA GRIFFIN  
HOME IMPROVEMENT OUTLET  
PO BOX 315  
WEST MONROE LA 71294



**RECEIPT**

7180 9594 0130 5000 0273

FROM:

LABOR STANDARDS DIVISION  
RE:

DP:  
PB:

SEND TO:

MARIA GRIFFIN  
HOME IMPROVEMENT OUTLE  
PO BOX 315  
WEST MONROE LA 71294

FEES:

Postage	0.37
Certified Fee	2.30
Return Receipt	1.75
Restricted	

TOTAL \$ 4.42

POSTMARK OR DATE

**CERTIFIED MAIL**

RE:

7180 9594 0130 5000 0266

JASON LE BLANC  
111 CALLAWAY AVE  
SHERWOOD AR 72120



**RECEIPT**

7180 9594 0130 5000 0266

FROM:

LABOR STANDARDS DIVISION  
RE:

DP:  
PB:

SEND TO:

JASON LE BLANC  
111 CALLAWAY AVE  
SHERWOOD AR 72120

FEES:

Postage	0.37
Certified Fee	2.30
Return Receipt	1.75
Restricted	

TOTAL \$ 4.42

POSTMARK OR DATE

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Carolyn Crocker vs.  
Jimmy Cheffen and Harrell  
Torrence

Order

On Tuesday, February 15, 2005, a hearing was held in the offices of the Arkansas Department of Labor to consider the appeal filed by Jimmy Cheffen and Harrell Torrence from a Preliminary Wage Determination Order entered against them and finding that they were indebted to Carolyn Crocker for wages earned. Present was Jimmy Cheffen and Harrell Torrence. Carolyn Crocker also appeared. From the record herein, testimony of parties and other evidence presented during hearing, the following order is entered.

Carolyn Crocker is claiming wages for work performed from September 15, 2004 to September 30, 2004, a period of time during which she alleges she was hired by Mr. Cheffen and Mr. Torrence to manage their art gallery. She presented personal time records to indicate that she worked. All parties testified there were no other employees.

Mr. Cheffen and Mr. Torrence testified that they never hired Ms. Crocker that she simply wanted to be a part of the gallery and the artistic community involved with the gallery. They both testified they never promised payment and never required specific work output, gave work directions or set a specific work schedule. Mr. Cheffen testified that he had tried to obtain a business loan, but was unable to obtain approval. He also testified that the rent was approximately \$800 per month. He testified that he intended for the business income to be comprised of consignment fees from art sales and fees for poetry readings. Both Mr. Cheffen and Mr. Torrence testified that there was not significant income from the gallery and both gentlemen had other sources of income. Both testified that the gallery had not yet made a sale. In his written statement to the Department's investigator, Mr. Cheffen alleged the gallery

was not yet open; however, he gave conflicting testimony at hearing when he stated that the gallery had derived fees from poetry readings.

Ms. Crocker testified that there was an agreement made in July of 2004, with Mr. Cheffen and Mr. Torrence to hire her and to pay her \$9.00 per hour. She testified that her brother was present during the conversations and meetings she had with Mr. Cheffen and Mr. Torrence. She further testified that she had resigned from a paying job at Bedford Camera and Video to work for the gallery. She presented copy work, biographies, and sign designs as evidence of the work she had done for the gallery. Mr. Cheffen and Mr. Torrence maintain that this was all volunteer work.

Witnesses on behalf of Ms. Crocker were her brother, Casey Crocker, her former boss, Domonic Rosetti and a friend, Geoffery Nash. Mr. Crocker testified that he had witnessed at least two conversations that his sister had with Mr. Cheffen regarding wages and payment. The first was prior to her working at the gallery and the second was at the end of the employment relationship. He testified that it was clear from the conversations that the parties were discussing employment and pay.

Domonic Rosetti testified that Ms. Crocker quit her job and told him she was going to work at the gallery. He testified that she told him she would be making \$9.00 per hour. Geoffery Nash testified that Ms. Crocker had keys to the gallery and he frequently saw her there. He testified that she told him she was getting paid. On cross examination, Mr. Crocker admitted that he had a disagreement with Mr. Cheffen over displaying art. Mr. Cheffen testified that Mr. Crocker had left profane phone messages on his voice mail. Mr. Crocker did not deny this statement.

Under questioning by the hearing officer, Mr. Cheffen was evasive concerning agreements with artists for commissions and how he managed to pay rent for a gallery located

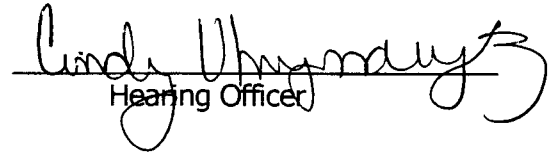
in an exclusive area of Little Rock. Furthermore, he was unclear regarding the status of the gallery as a partnership, corporation or sole proprietorship. Mr. Cheffen appeared to be intelligent, articulate, well educated and well spoken. It is hard to believe that so many details escaped his attention or consideration.

Mr. Cheffen's girlfriend testified, however, she was not credible and, under questioning from the hearing officer, admitted she had never spoken to Ms. Crocker or witnessed any conversations about compensation or pay or the lack thereof that Mr. Cheffen had with Ms. Crocker. Her chief complaint was Ms. Crocker's wardrobe.

Mr. Cheffen and Mr. Torrence testified that a lot of people had keys to the gallery and a lot of people helped to get it ready to open. They testified that these were just friends wanting to help and they thought Ms. Crocker was of the same mind. They both testified that they told Ms. Crocker there was no money to pay her. Mr. Cheffen claimed that Ms. Crocker quit her job because of a rash, not because of a job offer.

It is not reasonable to believe that Ms. Crocker produced work on behalf of the gallery, quit her previous job, possessed a key, and maintained a regular daily work schedule as a "volunteer". Mr. Cheffen and Mr. Torrence would have the Department believe that the gallery was nothing more than an embodiment of community spirit and love of the arts with no commitments to anyone. The facts are otherwise. This was a business, albeit a poorly executed one that was in operation, showing art, hosting poetry readings, paying a substantial monthly rent, and accepting art on consignment. Mr. Cheffen, by his own admission, was applying for business loans. No reputable business, possessing possibly valuable art inventory on consignment, would freely hand out keys to "friends" or "lots of people".

THEREFORE, it is hereby ordered that the Preliminary Wage Determination Order,  
finding Jimmy Cheffen and Harrell Torrence are indebted to Carolyn Crocker in the amount of  
\$697.50, is affirmed.

  
Hearing Officer

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

**IN RE:       ALFRED AUSTIN**  
**d/b/a GRANNY'S KITCHEN, PINE BLUFF, ARKANSAS**

**ORDER**

**HISTORY:**

On Wednesday, July 27, 2005, a hearing was held in the offices of the Arkansas Department of Labor ("Department") as a result of Alfred Austin's ("Austin") contest of the Department's computation of five thousand six hundred eighty-eight dollars and 89/100ths (\$5,688.89) in back wages due for violations of the Arkansas Minimum Wage and Overtime Act. The Department mailed notice of hearing to Austin on June 24, 2005, but Austin failed to appear. Representing the Department were Daniel Faulkner, Attorney; Cynthia Uhrynowycz, Labor Standards Administrator; Pam Brown, Labor Standards Investigator; and Susan Miller, Legal Secretary. Rebecca Bryant served as Hearing Officer. The agency presented evidence in the form of exhibits and oral testimony by Uhrynowycz, Brown, and Miller.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Pam Brown conducted a wage and hour investigation of Granny's Kitchen in May 2004 and determined that \$5,803.33 in back wages were due to 57 employees for violations of the Arkansas Minimum Wage and Overtime Act (Exhibit 1). The Department notified Austin of these violations in an assessment letter dated June 2, 2004, and Austin subsequently requested an administrative hearing on June 16, 2004 (Exhibit 3). The Department recalculated the computations due to minor errors in the original computations sheets, and Austin was notified of the new amount of \$5,688.89 in back wages due to 57 employees for violations of the Arkansas Minimum Wage and Overtime Act on September 20, 2004 (Exhibits 2 and 4). The Department



sent notice of hearing to Austin on June 24, 2005 (Exhibit 5). Austin failed to appear at the hearing, and Austin has submitted no evidence to contradict the agency's evidence.

IT IS THEREFORE CONSIDERED AND ORDERED that Alfred Austin d/b/a Granny's Kitchen pay to the order of the Arkansas Department of Labor the sum of **five thousand six hundred eighty-eight dollars and 89/100ths (\$5,688.89)** for back wages owed under the Arkansas Minimum Wage and Overtime Act. Upon payment, the Department shall distribute the wages according to the investigation computations.

James L. Salkeld  
Director  
Arkansas Department of Labor

By: Rebecca J. Bryant  
Rebecca J. Bryant, Hearing Officer  
Arkansas Department of Labor  
10421 West Markham Ave.  
Little Rock, AR 72205

DATE: 9-28-05